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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

RUSSELL WYATT,

Plaintiff,

v.

WELLS FARGO BANK N.A. AND
AMERICAN EXPRESS COMPANY,

Defendants.

Case No. 3:23-cv-00139-JMK

JOINT MOTION TO AMEND SCHEDULING ORDER

NOW COME Plaintiff Russell Wyatt (“Plaintiff”), by counsel, Defendant Wells Fargo Bank, N.A. (“Wells Fargo”), by counsel, and Defendant American Express National Bank, erroneously sued as “American Express Company” (“American Express”) (collectively with Wells Fargo, “Defendants”) (Defendants collectively with Plaintiff, the “Parties”), by counsel, and hereby jointly move the Court for entry of an Order extending the deadlines to conduct discovery, exchange

preliminary witness lists, and file pretrial motions to allow Defendants to complete their investigations of Plaintiff's respective allegations and allow the Parties to engage in further settlement negotiations. In further support of the motion, the Parties state as follows:

1. Where a motion to amend is filed after the court has entered a scheduling and planning order that establishes a deadline for amended pleadings, the motion is governed by Rule 16(b). *See Kendall Dealership Holdings, LLC v. Warren Distribution, Inc.*, No. 3:18-cv-0146-HRH, 2022 WL 1307576, at *2 (D. Alaska 2022).

2. A party seeking to amend a pleading after the date specified in a scheduling order must first show "good cause" for amendment under Rule 16(b), which primarily considers the diligence of the party seeking amendment. *See Blake v. NCMIC Insurance Company*, No. 3:17-cv-00193-JMK, 2021 WL 2832939, at *3 (D. Alaska 2021) (citing *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608 (9th Cir. 1992)). Good cause may be found where the moving party shows it: 1) is unable to comply with the deadlines contained in the scheduling order due to issues not reasonably foreseeable at the time of the scheduling order; or 2) was diligent in seeking an amendment once the party reasonably knew that it could not comply with the scheduling order. *Id.* (citing *Lerma-Mayoral v. City of El Centro*, No. 15-cv-818-LAB (PCL), 2017 WL 1807905, at *1 (S.D. Cal. 2017)).

3. On October 20, 2023, the Court entered a Scheduling Order setting forth various pre-trial deadlines in this action. *See generally* Scheduling Order (ECF No. 19).

4. On November 20, 2023, the Court entered an Order amending the deadline for the parties to file any motions to amend their pleadings to January 4, 2024. *See* (ECF No. 23).

5. At this point in the action, the Parties have been diligently engaged in written discovery and settlement negotiations. However, a resolution has not yet been reached between Plaintiff and either of the Defendants.

6. In addition, American Express intends to file a Motion to Substitute Counsel. Accordingly, American Express' new counsel of record will require additional time to analyze Plaintiff's claims and the Parties' discovery responses.

7. The granting of this Motion to Amend will allow the Parties adequate time to continue their respective investigations and to conduct further settlement negotiations in this matter.

8. This request is not made for the purpose of delay and will not disturb the trial date.

9. Accordingly, the Parties respectfully request an amendment of the Scheduling Order to extend the deadline to submit discovery motions and to identify experts to July 1, 2024; to extend the deadline to conduct fact discovery and

exchange preliminary witness lists to August 1, 2024; to extend the deadline to conduct expert discovery to September 30, 2024; to extend the deadline to submit dispositive motions to November 15, 2024; and to extend the deadline to submit motions to exclude expert testimony to January 24, 2025.

10. A proposed order reflecting the relief requested in this motion is attached.

WHEREFORE, Plaintiff Russell Wyatt, Defendant Wells Fargo Bank, N.A., and Defendant American Express National Bank respectfully request that this Court enter an Order amending the current Scheduling and Planning Order to extend the deadlines to conduct discovery, exchange preliminary witness lists, and file pretrial motions.

Dated this 2nd day of April, 2024.

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